

REMARKS

This Response is made to the Official Action mailed December 18, 2009. A request for a one-month extension of time is made herein. Claims 1 to 21 are currently pending in this patent application. Reconsideration and withdrawal of the requirement for restriction are respectfully requested in view of the following remarks.

Applicant notes that the subject matter of the claims is subject to a requirement for election under 35 U.S.C. §§121 and 372. Applicant is required to make an election among two allegedly distinct inventions, namely Group I, covering claims 1-11, drawn to a toothbrush head and Group II, covering claims 12-21, drawn to a process of making a toothbrush head.

Applicant respectfully traverses the requirement for restriction, initially because it does not comply with the unity of invention standard set by the PCT, and secondly, because it is improper under U.S. restriction practice since there would be no additional burden upon the Examiner to search both groups together.

The standard applicable to the instant application is not one of restriction practice under U.S. guidelines, but one of unity of invention under the PCT. In the instant case, no lack of unity of invention was found by the International Searching Authority or the International Preliminary Examining Authority, and all claims were searched and examined as one invention. The question of unity of invention may be reexamined only within the scope of rules of the Patent Cooperation Treaty (35 U.S.C. §372(b)), and restriction requirements made according to U.S. practice, which are more restrictive than the PCT regulations, are in error. PCT Article 27 ("no national law shall require compliance with requirements relating to form or contents ... different from or additional to those which are provided for in this Treaty and the Regulations").

PCT Rule 13.1 states that there exists unity of invention if the international application relates "to one invention only or to a group of inventions so linked as to form a single general inventive concept." Clearly the general inventive concept which links the alleged various inventions here is a toothbrush head and a method of making the toothbrush head. PCT Rule 13.2 states that unity of invention shall be fulfilled where there is a technical relationship among those inventions involving one or more of the same or corresponding technical features, where the technical feature defines the contribution that each of the claimed inventions makes over the prior art. Here, both sets of claims are based on the same technical feature, i.e., a toothbrush head with its bristles set in a gel material, preferably a polyurethane gel.

Furthermore, in accordance with U.S. practice, M.P.E.P. §803, mandates two criteria for a proper restriction requirement: 1) the inventions must be independent or distinct as claimed; and 2) there must be a serious burden on the Examiner if restriction is not required.

It is urged that the above Groups are merely different embodiments of a single inventive concept for which a single patent should issue and do not constitute distinct inventions such as to require that the subject matter be prosecuted in separate patent applications. "Independent", according to M.P.E.P. §802.01, means that "there is no disclosed relationship between the two or more subjects disclosed." The subject matter of Groups I and II is clearly related, having arisen from a singular research effort, as related to a toothbrush head and a process for making a toothbrush head. Therefore, the Groups are not independent inventions within the meaning of §802.01. Furthermore, it is believed that an adequate search with respect to the toothbrush head and a process of making the toothbrush head would necessarily encompass the same art. Therefore, there is not an undue burden on the Examiner with respect to searching the subject matter of the invention.

In view of the foregoing, and further in view of the interest of efficiency and cost savings to both Applicant and the PTO, reconsideration and withdrawal of the requirement for restriction are requested. However, pursuant to 37 C.F.R. §§1.142 and 1.143, Applicant provisionally elects, subject to the traverse set forth above, Group I, covering claims 1-11, drawn to a toothbrush head. In the event the requirement is made final, Applicant hereby reserves the right to file one or more divisional applications directed to the non-elected subject matter.

Favorable reconsideration of the requirement for restriction and allowance of this application with claims 1-21 are earnestly solicited.

Respectfully submitted,



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